

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHILIP DANIELS,	:
	:
Plaintiff,	: CIVIL ACTION NO. 3:05-CV-0830
	:
v.	: (JUDGE CONABOY)
	: (Magistrate Judge Blewitt)
DR. BOHINSKI, et al.,	:
	:
Defendants.	:

ORDER

AND NOW, THIS 22nd DAY OF FEBRUARY 2006, IT APPEARING TO THE COURT THAT:

1. Plaintiff, an inmate at the State Correctional Institution at Dallas ("SCI-Dallas"), in Dallas, Pennsylvania, filed this 42 U.S.C. § 1983 action on April 26, 2005, (Doc. 1), and filed an Amended Complaint of June 10, 2005, (Doc. 11);

2. The matter was assigned to United States Magistrate Judge Thomas M. Blewitt, who issued a Report and Recommendation on January 31, 2006, recommending that this action be dismissed without prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, (Doc. 29);

3. Neither party has filed objections to the Report and Recommendation which were due by February 17, 2006.

IT FURTHER APPEARING TO THE COURT THAT:

1. When a magistrate judge makes a finding or ruling on a motion or issue, his determination should become that of the court

unless objections are filed. See Thomas v. Arn, 474 U.S. 150-53 (1985). Moreover, when no objections are filed, the district court is required only to review the record for "clear error" prior to accepting a magistrate judge's recommendation. See Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998).

2. Our review of the record reveals no clear error in the Magistrate Judge's conclusion that Plaintiff's request to withdraw the above-captioned civil rights action (which indicates that he wishes to file a civil negligence suit in the Luzerne County Court of Common Pleas), (Doc. 28), is properly deemed a Notice of Voluntary Dismissal under Rule 41(a)(1) and this matter should be dismissed without prejudice.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Report and Recommendation, (Doc. 29), is ADOPTED;
2. Plaintiff's 42 U.S.C. § 1983 action is DISMISSED WITHOUT PREJUDICE;
3. The Clerk of Court is directed to close this case.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge